## REMARKS

### Status Of Application

Claims 11-22 are pending in the application; the status of the claims is as follows:

Claims 15-18 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,089,086 to Swindler et al. in view of U.S. Patent No. 5,438,869 to Mueller et al., and in further view of U.S. 3,859,651 to Thomas, Jr.

### Claim Amendments

Claim 15 has been amended to describe with more particularity the means by which a signal is transmitted from a gage assembly to a dial assembly. This change does not introduce any new matter.

### No New Matter

This Amendment is being presented promptly after the discovery of the need therefor. This Amendment does not affect the scope of the claims, does not introduce any new matter, does not present any new issue, does not require any additional search, and will not present an undue burden on the personnel of the Patent and Trademark Office. Accordingly, it is respectfully requested that the Amendment be entered in accordance with 37 C.F.R. § 1.312.

**35 U.S.C. § 112 Rejection**

The rejection of claims 15-18 under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, is respectfully traversed based on the following.

Applicant has amended independent claim 15 to provide antecedent basis for the limitation "said tank magnet." As claims 16 – 18 depend from claim 15, it is believed that this amendment to claim 15 overcomes the rejection of claims 16 – 18 as well.

Accordingly, it is respectfully requested that the rejection of claims 15-18 under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, be reconsidered and withdrawn.

**35 U.S.C. § 103(a) Rejection**

The rejection of claims 11-22 under 35 U.S.C. §103(a), as being unpatentable over U.S. Patent No. 6,089,086 to Swindler et al. in view of U.S. Patent No. 5,438,869 to Mueller et al., and in further view of U.S. Patent No. 3,859,651 to Thomas, Jr., is respectfully traversed based on the following. Because the Examiner has presented the same grounds for rejecting each of independent claims 11, 15, 19, the following arguments should be taken as applying to each.

*Mueller is Non-Analogous Art*

As Applicant has previously argued, Mueller et, al. ("Mueller") is non-analogous art and should not be used as a basis for rejection of the present claims. Applicant's full arguments are contained in its response dated January 4, 2006, and will not be repeated here. However, in short, the Mueller patent addresses a problem that is neither in the field of Applicant's endeavor nor reasonably pertinent to the particular problem with which the Applicant is concerned. See, *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445

(Fed. Cir. 1992). Mueller presents an improved reed switch that uses an "ameliorator" magnet to "reduce the magnetic flux density required to close the first and second reeds" of the switch. (Mueller, Abstract). Mueller further states that this type of improved reed switch has applications in intrusion detection systems. (Mueller, Col. 1, ll. 18 – 19). Thus, Mueller does not satisfy the first part of the *Oetiker* test because intrusion detection systems are not in the field of Applicant's endeavor, dial gauges. Furthermore, the stated object of Mueller's invention, namely, reducing the amount of flux density required to close a circuit, is not the problem addressed by the present invention, which is to provide a dial gauge that allows one pole of a dial magnet to pass by the reed switch without opening the switch, while the opposite pole is able to open the switch. (See, Specification, paragraph [0006]). In order to solve this problem, a reasonable inventor would look to other gauge art, and perhaps to any other art in which a magnet is rotated such that both north and south poles must interact with a switch of some sort, wherein only one pole will trip the switch.

In Mueller, there is no indication that the disclosed invention is capable of either of these elements. First, Mueller discloses only reed switches used in connection with intrusion detection systems. As described by Mueller, these reed switches are inserted in door or window frames and a corresponding magnet is mounted in the door or window. When the magnet is brought near the switch, the switch closes. (Mueller, Col. 1, ll, 50 – 66). Mueller thus indicates that the activating magnet must be fixedly mounted within the door or window, the implication being that the magnet is thus unable to (1) rotate or (2) turn to present both north and south poles to the switch. Because it does not address two of the basic elements addressed by the present invention, Mueller does not satisfy the second part of the *Oetiker* test in that it is not reasonably pertinent to the problem addressed by the present invention and would not have logically commended itself to the Applicant's attention in considering its problem. *See, In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). In light of these failings, Mueller is non-analogous art that should not be considered by the Examiner, and can not form the basis for a rejection under 35 U.S.C. §103(a).

*Swindler et al. in View of Thomas and Mueller Fails to Disclose all the Elements of the Present Invention*

The Examiner has asserted that Mueller discloses a bias magnet positioned such that said reed switch is held in the first position when the poles of said dial and bias magnets are in a first orientation and will be held in a second position when the poles of the dial magnet and bias magnet are in a second orientation. (Office Action of April 17, 2006, page 4). Applicant disagrees with this characterization for the following reason. The present invention is clear that the word "orientation" is used to describe at least a 180° rotation of the dial magnet. (Specification, paragraph [0006]). Mueller does not disclose different magnetic poles being presented to the switch (first orientation and second orientation), nor does it address the effects of these different poles on the switch.

Equating Mueller's "external magnet" with the "dial magnet" of the present invention and Mueller's "ameliorator magnet" with the bias magnet of the present invention, it is apparent that the poles of Mueller's external magnet never change orientation with respect to the ameliorator magnet or reed. In fact, Mueller is almost silent on the importance of the poles of the external magnet. Mueller never mentions the word "south" in the entire patent, and only uses the word "north" once: "A north pole is induced in the reed 136 which is the same pole as the closest portion of the external magnet 130." (Mueller, Col. 11, ll, 23 – 25). Furthermore, in the figures accompanying the Mueller reference, only the north pole of the external magnet is shown as interacting with the reed. (*See*, Mueller, figs. 5 & 7). Taken together, this demonstrates that Mueller was not concerned with the poles of the external magnet, and does not disclose a reed switch that changes position in response to different orientations of the dial or external magnet.

Because Mueller fails to disclose the element of "a bias magnet positioned such that said reed switch is held in the first position when the poles of said dial and bias magnets are in a first orientation and will be held in a second position when the poles of the dial magnet and bias magnet are in a second orientation," the combination of Swindler et al. in view of

Thomas and Mueller fails to disclose all the elements of the present invention and can not form the basis of a rejection under 35 U.S.C. §103(a).

Because it is believed that the above arguments are sufficient to traverse the rejections of independent claims 11, 15, and 19, and as the remainder of claims 11 – 22 depend each from one of those independent claims, it is believed that the preceding claims are sufficient to traverse the rejection. Accordingly, it is respectfully requested that the rejection of claims 11-22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,089,086 to Swindler et al. in view of U.S. Patent No. 5,438,869 to Mueller et al., and in further view of U.S. Patent No. 3,859,651 to Thomas, Jr., be reconsidered and withdrawn.

## CONCLUSION

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a fee, other than the issue fee, is due, please charge this fee to Hitchcock Evert LLP's Deposit Account No. 503374.

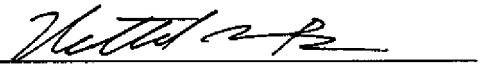
Any fee required by this document other than the issue fee, and not submitted herewith should be charged to Hitchcock Evert LLP's Deposit Account No. 503374. Any refund should be credited to the same account.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be

construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee, and not submitted herewith should be charged to Hitchcock Evert LLP's Deposit Account No. 503374. Any refund should be credited to the same account.

Respectfully submitted,

By: 

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